THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE
ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPF

MICHAEL J. SULLIVAN
DIRECTOR

February 15, 1995
AO-95-09

Edward J. Smith, Esq.
Two Center Plaza, Suite 420
Boston, MA 02108

Re: Electronic funds transfer of contributions

Dear Mr. Smith:

This letter is in response to your February 3, 1995 request for an advisory opinion.

You have stated that the Lawyers for Action Political Action Committee ("LFA") uses an electronic funds transfer system for the collection and receipt of contributions made to the committee. "LFA is a joint enterprise with the Massachusetts Academy of Trial Attorneys and the Association of Trial Lawyers of America, under which an independent depository is created for the receipt of preauthorized electronic fund transfers, as described in G.L. c. 167B, at monthly intervals from an identified list of supporters of the three organizations. Each of the parties receives a monthly lump sum from the depository, which represents the gross sum of all the electronic fund transfers authorized for that party by the contributor. LFA is responsible for and pays its share of the actual costs of this system, including bank charges and a fair share of all staff and associated expenses."

You have asked if the electronic funds transfer system established by LFA for the receipt of contributions from supporters is permissible under M.G.L. c. 55.[1]

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[1] This office does not ordinarily address, in advisory opinions, actions which have already occurred. This opinion is issued however, since the described transfers are likely to be of interest to other political committees or candidates and because you have asked if you can continue to receive contributions by electronic funds transfer. As discussed below, absent legislative action, you may not continue to use the system.

For the reasons which follow, we have concluded that electronic funds transfer systems are not permissible under M.G.L. c. 55.[2]

You have suggested that in light of recent amendments to c. 55 (by St. 1994, c. 292, s. 9) an interpretation of the statute may be in order. Prior to the 1994 amendment to section 9, the first paragraph of the section stated:

> No individual, candidate, or political committee, or person acting on behalf of said individual, candidate, or political committee, shall accept a contribution of money from any one person or political committee if the aggregate amount contributed in a calendar year exceeds fifty dollars except by check or other negotiable instrument. (Emphasis added).

Chapter 292 of the Acts of 1994 amended section 9 to prohibit a candidate or political committee from accepting contributions of more than $50.00 from any one contributor in a calendar year made by money order or other negotiable instrument (e.g., bank check, cashier's check, or traveler's check) other than a check on which the contributor is directly liable such as a personal check.[3]

Section 9 is designed to assure a means by which accurate information regarding contributors is received and reported by candidates and committees receiving contributions. Section 9, as amended, provides for an audit trail of documentation which can be used by candidates, committees, and this office, to assure compliance with the disclosure and limitations provisions of the campaign finance law.

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[2] Such systems are permissible, however, if the total contribution made through the system by any individual during a calendar year does not exceed $50. See M.G.L. c. 55, s. 9. We assume, for purposes of this opinion, that contributions would exceed $50 per calendar year.

[3] The first paragraph of section 9 now provides, in relevant part, as follows: "No individual, candidate or political committee, or person acting on behalf of said individual, candidate, or political committee, shall accept a contribution of money from any one person or political committee if the aggregate amount contributed in a calendar year exceeds fifty dollars except by check. For the purposes of the preceding sentence the word "check" shall mean a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account which represents or contains the contributor's funds and shall not mean a certified check, cashier's check, treasurer's check, registered check, money order, traveler's check or other similar negotiable instrument. . .."

In interpreting s. 9, we must ascertain the intent of the legislature based on the plain meaning of the words used in the statute. See M.G.L. c. 4, s. 6. An electronic transfer of funds cannot be considered a "negotiable instrument." Unlike a transfer of funds by negotiable instrument, once funds are transferred, they can be drawn on immediately.

Electronic funds transfers are regulated by M.G.L. c. 167B, which was enacted in 1981. In 1994 the legislature narrowed the range of permissible methods for making contributions to candidates and political committees. In 1994 the legislature must be presumed to have known about s. 167B and that contributions could be made by electronic transfer if such an option existed in section 9.[4] In addition, c. 55 is a comprehensive statute, see Anderson v. City of Boston, 376 Mass. 178, 185 (1978), and any method of raising funds not authorized by c. 55 is prohibited. See M.G.L. c. 55, s. 7. Therefore, in the absence of an explicit exemption for electronic funds transfers, this office cannot assume that the legislature intended such an exemption to exist.

We are compelled to conclude that even if LFA's system is not used to circumvent the disclosure and limitations provisions of the campaign finance law, the system is not permitted by the language or legislative history of c. 55.[5] We realize, however, that electronic transfers are commonplace and that perhaps the campaign finance law should be amended to allow such transfers. The office would not object to legislative initiatives to amend the law if safeguards are built into the electronic transfer process, e.g., assurances that certain information is provided the recipient of contributions. In particular, the recipient should be provided with: (1) the name and address of each contributor; (2) the amount of each individual's contribution; (3) a copy of the signed authorization card for each contributor; and (4) the contributor's occupation and employer where the amount contributed will be $200 or more during a calendar year.

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[4] In addition, the legislature has considered and expressly authorized the electronic transfer of funds in the context of campaign finance regulation where deemed appropriate. See M.G.L. c. 10, s. 44, which provides for the distribution of funds "by direct deposit" to the accounts of constitutional candidates opened pursuant to M.G.L. c. 55, s. 19.

[5] In contrast, Federal law, unlike Massachusetts law, does not require that contributions over a given amount be made only by check or similar draft, and states that a "contribution" includes "any . . . deposit of money." See 2 U.S.C. s. 431(8)(A)(i). Relying on this provision, the Federal Elections Commission has stated that contributors may authorize automatic transfers from their bank accounts to campaign committees. See FEC AO 1989-26.

This opinion has been rendered solely on the basis of the representations made in your letter, and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

Michael J. Sullivan
Director

MJS/cp